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In the Supreme Court of the United States

OCTOBER TERM, 1962

COLUMBUS PRODUCTION CREDIT ASSOCIATION,
PETITIONER

v.

STANLEY J. BOWERS, TAX COMMISSIONER OF OHIO

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

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STANLEY J. BOWERS, TAX COMMISSIONER OF OHIO

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

The Solicitor General, on behalf of the Columbus Production Credit Association, petitions for a writ of certiorari to review the decision of the Supreme Court of the State of Ohio in this case.

OPINIONS BELOW

The opinion of the Board of Tax Appeals of the State of Ohio (App. A, *infra*, pp. 17–26; R. 9–17)[1] is not officially reported. The opinion of the Supreme Court of Ohio (App. B, *infra*, pp. 27–29; R. 133–134) is reported at 173 Ohio St. 97, 180 N.E. 2d 1.

[1] "R." refers to the certified transcript of record, and the page references relate to the overall numbering system used therein.

agency (48 Stat. 259, 261, as amended, 12 U.S.C. 1131d, 1131g). It is under the local supervision of the Federal Intermediate Credit Bank of Louisville, which serves the Fourth Farm Credit District (composed of Ohio, Indiana, Kentucky and Tennessee), one of the 12 farm credit districts into which the United States is divided (67 Stat. 394, as amended, 12 U.S.C. 636g; 70 Stat. 659, 12 U.S.C. 1027(b)). The federal intermediate credit banks are the major source of the funds for loans made by the associations, which rediscount their borrowers' notes with the banks (48 Stat. 261, 12 U.S.C. 1131h).

While the initial capital for the operations of the production credit associations, in the amount of approximately $90 million, was provided by the federal government in 1933, the amount of federal financial participation has been steadily reduced in the intervening years. This was accomplished primarily through the requirement of Section 23 of the Farm Credit Act of 1933 (48 Stat. 261, as amended, 12 U.S.C. 1131g) that any borrower from an association must own class B stock in the association to the extent of $5 for every $100 borrowed, and through purchases of additional stock by such borrowers. At present, the Governor of the Farm Credit Administration holds class A stock in only 9 of the 487 production credit associations and class C stock in 3 others, the government's current investment being approximately $600,000.[3] Petitioner had retired all

[3] Production Credit Associations, Report of Operations, p. 2 (FCA, December 1961).

of its government-owned stock by 1953 and since that time has been entirely owned by farmer-members (R.27).

Section 63 of the Farm Credit Act of 1933 (48 Stat. 267, as amended, 12 U.S.C. 1138c) provides a tax exemption for the production credit associations in the following terms:

> Such * * * associations, their property, their franchises, capital, reserves, surplus, and other funds, and their income, shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority; except that any real property and any tangible personal property of such * * * associations * * * shall be subject to Federal, State, Territorial, and local taxation to the same extent as other similar property is taxed.

Accordingly, petitioner has regularly paid taxes on its real estate (*i.e.*, its office building). The last sentence of Section 63 provides:

> The exemption provided herein shall not apply with respect to any production credit association or its property or income after the class A stock held in it by the Governor has been retired * * *.

The Governor's class A stock in petitioner having been retired, petitioner also pays a tax imposed by Sections 5725.13–.17 of the Ohio Revised Code on the intangible property of a dealer in intangibles, which tax is (under Section 5725.26 of the Ohio Revised Code) in lieu of all other taxes on the property and assets of such a dealer, other than real estate.

The Ohio Department of Taxation assessed against petitioner arrearages for the years 1953 through 1959 in the payment of Ohio's corporate franchise tax (Sections 5733.01–.99 of the Ohio Revised Code), which is statutorily defined as a tax or fee "for the privilege of doing business in this state, owning or using a part or all of its capital or property in this state, or holding a certificate of compliance with the laws of this state authorizing it to do business in this state * * *" (Section 5733.01).[4] The assessment was for $6,947.25 in taxes plus penalties of $1,042.09. On petitioner's application for review on the ground that, under federal law, it was exempt from the franchise tax (R. 25–26), the assessment was affirmed by the Tax Commissioner of Ohio (*ibid*). Petitioner then appealed to the State Board of Tax Appeals on the same ground (R. 24–25; App. B, *infra*, p. 20).

The Board reversed the Commissioner's order. It found that the tax is "a franchise tax or license fee" that can be imposed on a federal instrumentality only to the extent allowed by Congress (App. A, *infra*, at p. 22). Noting that waivers of tax immunity are to be narrowly construed, the Board concluded that the Farm Credit Act contains "no clear waiver of

[4] The tax is a percentage of the "issued and outstanding shares of stock" allocable to the corporation's Ohio business, which, as defined, amounts to the book value of corporate net worth (Section 5733.05). The statute provides numerous provisions in aid of the enforcement of the tax, such as a requirement that an annual report be filed, the establishment of a lien on corporate property for payment of the tax, and a provision that a delinquent corporation loses its privilege of doing business in the State.

immunity in positive language" with respect to the imposition of state franchise taxes on production credit associations (*id.* at p. 23). It found support for this conclusion in an analysis of the Act, which in its view demonstrated that Congress did not intend that production credit associations be subjected to state control to the extent represented by the power to tax their "right to do business and the right to own property" in the State (*id.* at p. 25).

The Supreme Court of Ohio reversed the Board of Tax Appeals. Although recognizing that petitioner is a federal instrumentality and finding that the tax in question is a "franchise tax," the court found that Section 63 of the Farm Credit Act had, in language that is "clear," "broad and plain" and "not ambiguous," waived the immunity of production credit associations from state franchise taxation after their class A stock held by the government had been retired (App. B, *infra*, at p. 29).

REASONS FOR GRANTING THE WRIT

This case, like *Federal Land Bank of Wichita* v. *Board of County Commissioners*, 368 U.S. 146, decided last Term, is of substantial importance to the administration of the federal farm credit system. Notwithstanding an express congressional grant of immunity, the Supreme Court of Ohio has held a production credit association—concededly a federal instrumentality (App. B, *infra*, at pp. 28–29)—subject to a state franchise tax.[5] If generally followed

[5] The court also conceded that the tax is a "franchise tax" (App. B, *infra*, at p. 28).